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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
DETROIT DIVISION**

MALIBU MEDIA, LLC,

Plaintiff,

v.

Civil Action No. 2:13-cv-13535-BAF-LJM

JOHN DOE, subscriber assigned IP address  
76.112.97.202,

Defendant.

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**PLAINTIFF'S RENEWED MOTION FOR LEAVE TO FILE ITS REQUEST FOR  
ENTRY OF CLERK'S DEFAULT PURSUANT TO FED. R. CIV. P. 55(a)  
UNDER SEAL**

Plaintiff, Malibu Media, LLC ("Plaintiff"), pursuant to the Court's Order Vacating Order to Show Cause (CM/ECF 18) hereby moves for entry of an order allowing Plaintiff to file its Motion for Entry of Clerk's Default Pursuant to Fed. R. Civ. P. 55(a) under seal, and states:

1. On August 21, 2013 this Court entered an Order (CM/ECF 5) granting Plaintiff leave to serve a third party subpoena on Comcast, Defendant's Internet Service Provider; however, the Order prohibits the Plaintiff from publically naming the John Doe Defendant.

2. The subpoena sought identifying information from Comcast to establish who was assigned Comcast IP address 76.112.97.202, which Plaintiff's investigator had detected as infringing Plaintiff's copyrighted movies.

3. On August 22, 2013 Plaintiff issued its subpoena, and received Comcast's response (the "Comcast Response") on October 17, 2013. The Comcast Response named Defendant as the subscriber assigned IP address 76.112.97.202.

4. Based on this information, Plaintiff amended its Complaint to name the subscriber identified by Comcast as Defendant, and on November 14, 2013, Plaintiff filed its Amended Complaint under seal (CM/ECF 8).

5. Defendant was served with Summons and the Amended Complaint on January 4, 2014. (CM/ECF 12).

6. On July 7, 2014, Plaintiff filed its Motion for Leave to File Its Request for Entry of Clerk's Default Pursuant to Fed. R. Civ. P. 55(a) Under Seal. (CM/ECF 14).

7. Plaintiff's Motion to Seal was denied by this Court on July 25, 2014, "because the proof of service merely lists the name of the individual served, without establishing whether that individual and the subscriber assigned the specific IP address in this case are one and the same . . .[.]" (CM/ECF 15).

8. Plaintiff renewed its Motion to Seal in conjunction with its response to the Court's Order to Show Cause. (CM/ECF 17).

9. On October 24, 2014, in the Court's Order Vacating Order to Show Cause (CM/ECF 18) the Court held "Plaintiff has improperly coupled a motion with its response to the show cause order[.]" and that Plaintiff should "comply with Fed. R. Civ. P. 7(b)(1), which dictates that '[a] request for a court order must be made by motion.'" *Id.*

10. Thus, Plaintiff is refiling its Renewed Motion separately from the response to the show cause order.

11. In order to address the Court's concern at (CM/ECF 15), Plaintiff is prepared to file with the Court the "Comcast Response", which establishes that the John Doe individual sued in this case and the Comcast subscriber assigned IP address 76.112.97.202 are, in fact, one and

the same. Plaintiff must, however, respect the Court's Order directing that Plaintiff refrain from publically identifying the Defendant.

12. Plaintiff thus proposes to file the Comcast Response as part of its Motion for Entry of Clerk's Default, which it proposed to file under seal in accordance with the Court's Order. Accordingly, Plaintiff hereby renews its Motion for Leave to File Its Request for Entry of Clerk's Default Pursuant to Fed. R. Civ. P. 55(a) Under Seal.

13. Plaintiff's renewed filing will allay any concerns the Court has concerning the identification of the subscriber assigned the subject IP address, and will allow for a proper default to be entered against Defendant for failing to plead or defend this suit.

14. Good cause exists to grant this motion.

WHEREFORE, Plaintiff respectfully requests that the Court allow the Plaintiff to file its Motion for Entry of Clerk's Default under seal. A proposed order is attached for the Court's convenience.

Dated: October 31, 2014

Respectfully submitted,

By: /s/ Paul J. Nicoletti  
Paul J. Nicoletti  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2014, I electronically filed the foregoing document with the Clerk of the Court and all parties using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

By: /s/ Paul J. Nicoletti  
Paul J. Nicoletti

**CERTIFICATE OF COMPLIANCE**

Pursuant to MI R USDCTED LR 5.1(a), I hereby certify that the PLAINTIFF'S RENEWED MOTION FOR LEAVE TO FILE REQUEST FOR ENTRY OF CLERK'S DEFAULT PURSUANT TO FED.R.CIV.P 55(a) UNDER SEAL has been prepared using one of the font and point selections approved by the Court in MI R USDCTED LR 5.1(a)(3). This document was prepared using Times New Roman (12 pt.).

This 31<sup>st</sup> day of October, 2014.

/s/ Paul J. Nicoletti  
Paul J. Nicoletti